CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

Analysis of Administrative Civil Liability

Complaint No. 2001-24

National Steel and Shipbuilding Company

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by
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INTRODUCTION

This report provides a summary of factual and analytical evidence supporting administrative assessment of civil liability in the amount of $174,801 against National Steel and Shipbuilding Company (NASSCO) for violations of *Waste Discharge Requirements (WDR), Order No. 97-36, General NPDES Permit No. CAG039001*, as alleged in *Complaint No. 2001-24* (See *Appendix A, Complaint No. 2001-24*).

BACKGROUND

The NASSCO facility covers approximately 127 acres of tidelands on the eastern waterfront of central San Diego Bay, at 28th Street and Harbor Drive in the City of San Diego. The San Diego Unified Port District is the lessor to NASSCO. The land portion of the lease covers approximately 80 acres. Improvements to the land area include approximately 1.6 million square feet (about 37 acres) of office, shop, and warehouse space, and 392,800 square feet (about 9 acres) of concrete platens for steel fabrication, a graving dock, and two shipbuilding ways. Improvements of the 47 acres of water area include a floating dry-dock. Additionally, 12 berths exist on piers or land to accommodate the berthing of ships.

Order No. 97-36 established a *narrative toxicity specification* for storm water discharges rather than a *numerical specification*. In addition to monitoring for toxicity, *Monitoring and Reporting Program No. 97-36* (MRP) includes monitoring for 16 chemical compounds. By including the monitoring for chemical compounds, the chemical concentrations in the storm water discharges can be identified and evaluated.

Additionally, the sediments adjacent to NASSCO contain elevated levels of chemical compounds and are the subject of Regional Board investigations for impacts to the benthic community and possible clean up actions.

The process to adopt the general shipyard permit, Order No. 97-36, *Waste Discharge Requirements, Order No. 97-36, General NPDES Permit No. CAG039001, For Discharges From Ship Construction, Modification, Repair, and Maintenance Facilities and Activities Located in the San Diego Region*, took several years to accomplish. Upon adoption, the WDRs were the subject of statutory appeals by NASSCO.

ALLEGATIONS

The following allegations against NASSCO are the basis for assessing administrative civil liability in *Complaint No. 2001-24.*

FAILURE TO COMPLY WITH DISCHARGE SPECIFICATION B.8. OF ORDER NO. 97-36

According to NASSCO's *1999-2000 Annual Stormwater Monitoring Report*, on February 12, 2000, NASSCO sampled storm water runoff from 21 discharge points at its facility. All 21 discharge points had a toxic response that violated the storm water discharge specification in *Order No. 97-36*. The results of samples analyzed at each discharge point are considered a separate violation. The severity of the toxic response varied at each discharge location.

The storm water sampling and analyses were conducted pursuant to *Order No. 97-36* and *Monitoring and Reporting Program No. 97-36*. The toxicity limit in *Order No. 97-36, Discharge Specification B.8.,* states the following:

> *Effective July 1, 1999, in a 96-hour static or continuous flow bioassay (toxicity) test, undiluted stormwater runoff associated with industrial activity which is discharged to San Diego Bay shall not produce less than 90 percent survival, 50 percent of the time, and not less than 70 percent survival 10 percent of the time, using a standard test species and protocol approved by the Executive Officer. Until July 1, 1999, this level of acute toxicity shall be a performance goal. [EBEP]*

DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

Pursuant to the Porter-Cologne Water Quality Control Act, California Water Code (CWC), § 13385 et seq., the maximum civil liability that a Regional Board may assess for violations of waste discharge requirements is:

- ten thousand dollars ($10,000) per day of violation; and
- ten dollars ($10) for every gallon discharged, over one thousand gallons discharged, that was not cleaned up.

Factors to be Considered in Determining the Amount of Administrative Civil Liability

When a regional board is determining the amount of civil liability imposed pursuant to CWC § 13385 et seq., the following factors shall be taken into account:

- the nature, circumstances, extent, and gravity of the violation, and
- with respect to the violator, the ability to pay,
- any prior history of violations,
- the degree of culpability,
- economic benefit or savings, if any, resulting from the violation, and
- other matters that justice may require.
- At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

Nature, circumstances, extent, and gravity of violation

Toxicity of the Discharge

It should be noted that two separate toxicity analyses were conducted on each sample and the survival responses were reported as the mean survival response for the two samples. For compliance with *Order No. 97-36*, a *lethality and growth* test was conducted using *Mysidopsis bahia*, an invertebrate (shrimp). The toxicity test was a seven day static test, that is, at the end of seven days the number of surviving shrimp are counted and reported. A laboratory control test is also conducted simultaneously. All of the control laboratory samples had a survival rate greater than 90%. A reference sample from the San Diego Bay was also tested during the 1999-2000 reporting period. The San Diego Bay reference sample taken on April 11, 2000, had a 95% survival rate.

The toxicity survival responses for the storm water discharges during the wet weather season 1999-2000 indicate the discharges are clearly toxic. As noted from NASSCO's *Annual Stormwater Monitoring Report* submitted by NASSCO on August 30, 2000, the storm water discharges listed in *Table 1. Storm water toxicity, July 1, 1999 through June 30, 2000*, violated the specified survival response limits for toxicity required by *Order No. 97-36, Discharge Specification B.8.* The percent mean survival response for the storm water discharge toxicity analyses ranged from 0% to 85%. The discharge from all 21 storm water outfalls violated the survival response requirement contained in *Order No. 97-36, Discharge Specification B.8.* Of the 21 storm water toxicity discharge outfalls sampled and reported, 6 discharges had a 0% survival response, 14 discharges had 50% or less survival response, 17 discharges had 75% or less survival

response, and all 21 discharges had 85% or less survival response.

Table 1. *Stormwater Toxicity, July 1, 1999 through June 30, 2000.*

Sample date	ID Number	Acute toxicity, 96-hour percent survival, mean
Feb 12, 2000	SW-1	50
Feb 12, 2000	SW-2	55
Feb 12, 2000	SW-3	35
Feb 12, 2000	SD5-1	**0**
Feb 12, 2000	SD5-2	**0**
Feb 12, 2000	SW-6	**0**
Feb 12, 2000	SW-7	40
Feb 12, 2000	SD9-2	50
Feb 12, 2000	SD9-7	25
Feb 12, 2000	SD9-9	70
Feb 12, 2000	SD9-15	40
Feb 12, 2000	Berth 2	**0**
Feb 12, 2000	Berth 3 / 4	**0**
Feb 12, 2000	Berth 5 / 6	25
Feb 12, 2000	Berth 9 / 10	75
Feb 12, 2000	SW-10	30
Feb 12, 2000	SW-11	**0**
Feb 12, 2000	Gate 6	80
Feb 12, 2000	Gate 2, berm	85
Feb 12, 2000	Bldg 1, berm	80
Feb 12, 2000	Gate 14, berm	80

To determine what components in the storm water discharges are causing the toxic response, a *toxicity identification evaluation* (TIE) must be conducted. However, *Order No. 97-36* does not require a TIE. As of January 25, 2000, staff is not aware of any TIE conducted or planned by NASSCO. Pursuant to the CWC § 13267, the Regional Board may direct NASSCO to conduct a TIE.

Chemical concentrations in the storm water discharge

Although *Order No. 97-36* does not contain *a Discharge Specification* (numerical limit) for chemical compounds in the storm water discharge, *Monitoring and Reporting Program No. 97-36* requires NASSCO to analyze the storm water discharges for various chemical compounds. The chemical compounds analyzed in the storm water discharges include the following:

Total Petroleum Hydrocarbons (TPH)	Total Suspended Solids (TSS)
pH	Arsenic
Cadmium	Chromium
Copper	Lead
Mercury	Nickel
Silver	Zinc
Chemical Oxygen Demand (COD)	Tributyltin (TBT)
Oil & Grease	Total Organic Carbon (TOC)

During the wet weather year 1999-2000, the storm water discharges from NASSCO property to San Diego Bay were sampled and analyzed from two separate storm events. For the first storm water discharge sampling on February 12, 2000, toxicity and chemical analyses were performed. For the second storm water discharge sampling on March 5, 2000, only the chemical compounds were analyzed. A total of 21 toxicity samples were taken and analyzed. A total of 42 chemical compound samples were taken and analyzed. Of the sixteen chemical compounds analyzed in the storm water discharges, the concentrations of copper and zinc were found at levels that could cause a toxic response.

The USEPA has adopted a *general storm water permit* document for various industrial facilities under its jurisdiction. The USEPA document, the *Final Reissuance of National Pollutant Discharge Elimination System (NPDES) Storm Water, Multi-Sector General Permit for Industrial Activities, Federal Register, Monday, October 30, 2000,* (Multi-Sector Permit) can be used to evaluate the significance of the chemical concentrations in NASSCO's storm water discharge to San Diego Bay.

The Multi-Sector Permit, *Sector R*, includes requirements for *Ship and Boat Building or Repair Yards*. According to the Multi-Sector Permit (p. 64766-69), when the industrial storm water discharge has concentrations greater than the *USEPA Benchmark Values* (p. 64767, Table 3), the industrial facility is required to increase monitoring frequencies. Additionally, the Multi-Sector permit states that the facility operators should review and modify their storm water pollution prevention plans (SWPPP) and best management practices (BMP) at their facility to try to improve the quality of the storm water discharge when discharge concentrations are greater than the *USEPA Benchmark Values*.

While the *USEPA Benchmark Values* are not an enforceable numeric limit, they are used to indicate concentrations of concern and to alert the regulated industrial facility to take actions to lower the concentrations in its discharge. When comparing the

chemical concentrations identified in the NASSCO storm water discharges to the *USEPA Benchmark Values,* copper and zinc concentrations were significant.

Copper

The copper concentrations from the respective samples of storm water discharges during the wet weather season 1999-2000 were compared to the *USEPA Benchmark Values*. As listed in *Table 2., A comparison of the storm water discharge copper concentration with USEPA Benchmark Values*, the copper concentrations (except one sample) from both storm water samples taken in 1999-2000 were greater than the *USEPA Benchmark Value* for copper. The storm water copper concentrations ranged from 0.029 mg/l to 1.800 mg/l and the average for the respective storms were 0.342 mg/l and 0.306 mg/l. Of the 42 samples analyzed for copper concentrations 41 samples were greater than the *USEPA Benchmark Value*, 29 samples were greater than twice the *USEPA Benchmark Value*, and 23 samples were greater than 3 times the *USEPA Benchmark Values*. The sample with the largest copper concentration, 1.800 mg/l, was greater than 28 times the *USEPA Benchmark Value* for copper.

Zinc

The zinc concentrations from the respective samples of storm water discharges during the wet weather season 1999-2000 were compared to the *USEPA Benchmark Values*. As listed in *Table 3., A comparison of the storm water discharge zinc concentration with USEPA Benchmark Values*, the zinc concentrations from both sets of storm water discharge samples taken in 1999-2000 were greater than the *USEPA Benchmark Value* for zinc. The storm water zinc concentrations ranged from 0.273 mg/l to 8.920 mg/l and the average for the respective storms were 1.602 mg/l and 0.621 mg/l. Of the 42 samples analyzed for zinc concentrations all 42 samples were greater than the *USEPA Benchmark Value*, all 42 samples were greater than twice the *USEPA Benchmark Value*, and 41 samples were greater than 3 times the *USEPA Benchmark Values*. The sample with the largest zinc concentration, 8.920 mg/l, is greater than 76 times the *USEPA Benchmark Value* for zinc.

COPPER

Table 2. *A comparison of storm water discharge copper concentration with USEPA Benchmark Value.*

ID Number	Copper concentration February 12, 2000 (mg/l)	Copper concentration March 5,2000 (mg/l)	Copper concentration Benchmark value USEPA, (mg/l) (CTR = .0048 mg/l)
SW-1	0.177	0.228	0.0636
SW-2	0.072	0.130	0.0636
SW-3	0.264	NT	0.0636
SD 3-1	NT	0.278	0.0636
SD5-1	0.489	0.652	0.0636
SD5-2	0.988	0.203	0.0636
SW-6	0.103	**0.029**	0.0636
SW-7	0.282	NT	0.0636
SD 7-1	NT	0.176	0.0636
SD9-2	0.498	0.249	0.0636
SD9-7	0.364	0.113	0.0636
SD9-9	0.339	0.272	0.0636
SD9-15	0.127	0.115	0.0636
Berth 2	0.883	0.402	0.0636
Berth 3 / 4	0.401	0.183	0.0636
Berth 5 / 6	0.395	0.250	0.0636
Berth 9 / 10	0.322	0.262	0.0636
SW-10	0.139	0.207	0.0636
SW-11	1.000	**1.800**	0.0636
Gate 6	0.096	0.165	0.0636
Gate 2, berm	0.086	0.094	0.0636
Bldg 1, berm	0.066	0.495	0.0636
Gate 14, berm	0.089	0.118	0.0636
sum	7.18	6.421	--
average	**0.342**	**0.306**	--

NT = not tested

ZINC

Table 3. *A comparison of storm water discharge zinc concentration with USEPA Benchmark Value.*

ID Number	Zinc concentration February 12, 2000 (mg/l)	Zinc concentration March 5, 2000 (mg/l)	Zinc concentration Benchmark value USEPA, (mg/l) (CTR = .090 mg/l)
SW-1	0.766	0.891	0.117
SW-2	0.720	0.836	0.117
SW-3	0.934	NT	0.117
SD 3-1	NT	1.350	0.117
SD5-1	2.810	**8.920**	0.117
SD5-2	7.970	1.430	0.117
SW-6	1.660	0.926	0.117
SW-7	1.460	NT	0.117
SD 7-1	NT	0.708	0.117
SD9-2	1.190	0.886	0.117
SD9-7	2.220	0.800	0.117
SD9-9	1.020	0.729	0.117
SD9-15	0.948	0.558	0.117
Berth 2	3.580	0.897	0.117
Berth 3 / 4	1.570	**0.273**	0.117
Berth 5 / 6	1.370	0.416	0.117
Berth 9 / 10	0.613	0.729	0.117
SW-10	1.100	1.310	0.117
SW-11	1.650	1.600	0.117
Gate 6	0.372	0.646	0.117
Gate 2, berm	0.606	0.676	0.117
Bldg 1, berm	0.504	2.250	0.117
Gate 14, berm	0.585	0.570	0.117
sum	33.648	13.048	--
average	**1.602**	**0.621**	--

NT = not tested

Another document used to evaluate significance of the copper and zinc concentrations was the California Toxics Rule, 40 CFR 131.38 (CTR). The CTR identifies the water quality criteria maximum concentration for saltwater for copper at 4.8 µg/l (.0048 mg/l) and for zinc at 90 µg/l (.090 mg/l). The copper concentrations of the storm water discharges listed in *Table 2.* exceed the CTR values. The zinc concentrations of the storm water discharges listed in *Table 3.* exceed the CTR values.

Volume

The volume of NASSCO's storm water discharges vary during a storm event according to the size of the storm event and according to the diversion practices being implemented. As listed in *Table 4., Reported storm flow volumes and average flow rates for NASSCO 1999-2000*, NASSCO reported a total flow of

396,378 gallons on February 12, 2000. Of the 23 discharge sampling locations, 12 locations were not included in the calculation for total discharge volume. The 12 sample locations are at specific storm drains rather than at the outfall to San Diego Bay. The discharge samples taken at each *storm drain* have an *SD-#* designation, and those taken at the *storm water outfall* have an *SW-#* designation. *Storm water outfalls SW-5* and *SW-9* have associated storm flow rates provided by NASSCO in its *Technical Report* submitted on August 30, 2000. The *Technical Report* provides an average flow rate based on an average 24-hour flow from a 2-year storm (1.62 inches of rain). The storm water outfall *SW-5* was flooded by Bay tide water during the sampling event. Therefore, the samples were taken at the storm drains, *SD-5* and *SD-2*. Storm water outfall *SW-9* is an extension of a municipal storm water pipe and some of the *SW-9* storm drains did not have a discharge during the storm event because the flow was diverted to the sanitary sewer.

With respect to the violator, the ability to pay

Staff is not aware of any circumstances that would prevent NASSCO from paying the proposed civil liability.

Prior History of Violations

NASSCO has not previously been cited for violations of storm water toxicity. The *storm water toxicity specification* in *Order No. 97-36* did not take effect until July 1, 1999. The toxicity specification was a performance goal until July 1, 1999. Monitoring for toxicity in the storm water was conducted and reported for the previous wet weather year 1998-1999. Some of the results did show toxicity in the discharge. For the wet weather year 1998-1999, the *toxicity specification* was a *performance goal* and not a *discharge specification*; therefore, the toxicity responses in the storm water were not a violation of *Order No. 97-36*.

NASSCO has had other violations of *Order No. 97-36*, such as effluent toxicity for different discharges or various oil spills, these violations are not used in the assessment of penalties in *Complaint No. 2001-24*.

Table 4. *Reported storm flow volumes and average flow rates for NASSCO 1999-2000.*

ID Number	Reported Volume 2/12/2000 (gallons)	Reported Volume 5/5/2000 (gallons)	Average flow as reported in Technical Report, 8/30/00 (gallons per hour, GPH)
SW-1	29,491	34,758	3,960
SW-2	57,977	68,276	7,870
SW-3	145,062	NT	16,544
SD 3-1	NT	@	--
SD5-1	@	@	(SW-5) 4,358
SD5-2	@	@	--
SW-6	9,673	11,392	1,299
SW-7	18,497	@	2,484
SD 7-1	@	@	--
SD9-2	@	@	(SW-9) 30,529
SD9-7	@	@	--
SD9-9	@	@	--
SD9-15	@	@	--
Berth 2	13,400	15,780	no data
Berth 3 / 4	12,125	14,279	1,771
Berth 5 / 6	20,799	24,484	3,628
Berth 9 / 10	6,636	7,815	2,826
SW-10	49,536	58,336	2,531
SW-11	33,182	39,077	1,687
Gate 6	@	@	no data
Gate 2, berm	@	@	no data
Bldg 1, berm	@	@	no data
Gate 14, berm	@	@	no data
sum	396,378	274,197	--

NT = not tested
@ = storm drain areas not known, volume was not calculated

Degree of Culpability

Due to the considerable attention to protect San Diego Bay and the amount of time allowed by *Order No. 97-36* for NASSCO to comply with *Discharge Specification B.8.*, the storm water discharges during the wet weather year 1999-2000 should have been in compliance with *Order No. 97-36*.

Order No. 97-36 provided NASSCO with approximately 20 months to comply with the *storm water discharge specification*. The Order was adopted on October 15, 1997. The sampling that occurred on February 12, 2000, was approximately 28 months after the adoption of *Order No. 97-36*. The storm water discharge sampling and analyses for the previous wet weather year 1998-1999 did have a toxic response in many of the discharges. At a minimum, NASSCO was aware of the toxicity of the storm water discharges after the wet weather year 1998-1999.

Storm water monitoring data for toxicity is not available for wet weather year 1997-1998 because *Order No. 97-36*, although adopted, was in various stages of appeal, litigation, and stay. For the wet weather year 1997-1998 the storm water monitoring was conducted pursuant to the previous NPDES permit for NASSCO, *Order No. 85-05,* which did not have a storm water monitoring requirement.

Although *Order No. 97-36* does not require NASSCO to perform a *toxicity identification evaluation* (TIE), the concept of a TIE is readily known and could have been performed. Pursuant to the *Standard Provisions* for an NPDES permit (40 CFR 122.41(d)), NASSCO has the duty to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment. Therefore, NASSCO should have analyzed the monitoring data and taken measures necessary to comply with *Order No. 97-36*. At this time staff is not aware that NASSCO plans to performed a TIE.

Economic benefit or savings, if any, resulting from the violation

Staff is not aware of any particular savings realized by NASSCO from failing to comply with *Order NO. 97-36*. In fact, NASSCO has spent monies in an attempt to control storm water discharges to San Diego Bay.

A storm water diversion system has been installed by NASSCO to divert various catchment basins at its facility to the sanitary sewer. Since February 12, 2000, additional storm water diversion systems have been installed by NASSCO. This year NASSCO is also installing a storm water treatment system. Staff has not received monitoring data for the wet weather season 2000-2001. Typically the storm water monitoring report data is submitted on August 30 of each year. NASSCO may have additional storm water discharge data for the current wet weather year 2000-2001.

The storm water diversion systems installed by NASSCO are typically designed to divert the first ¼ inch of rainfall to the sanitary sewer system. For certain catchment basins at the NASSCO shipyard, more than the ¼ inch of rainfall has been diverted to the sanitary sewer. Some of the catchment basins may discharge to an outfall once the first ¼ inch of rainfall has been diverted to the sanitary sewer. Many storms produce more than ¼ inch of rainfall and the resulting discharges may

produce a toxic response. Other catchment basins do not divert any rainfall runoff.

When considering the effort by NASSCO to control storm water discharges, the recommended liability for volume of discharge (per gallon minus the first 1000 gallons) is minimal. The recommended liability also considers that NASSCO did not or could not identify the total volume of the discharge.

Other matters as justice may require.

Staff time

Over the course of dealing with NASSCO regarding the storm water toxicity detailed in this staff report, the Regional Board has invested an estimated 80 hours to investigate and consider enforcement actions. At an average rate of $80 per hour, the total investment of Regional Board resources is $6,400.

Susceptibility to Cleanup and Voluntary Cleanup Efforts Undertaken

The storm water discharges are not directly susceptible to cleanup. However, the sediments adjacent to the NASSCO land are susceptible to cleanup. This report does not evaluate the relationship between the storm water chemical concentrations and sediment chemical concentrations. This report recognizes that sediment chemical concentrations are significant and the chemical concentrations in the storm water are significant.

Therefore, the calculations for the civil liability include a factor for the volume of discharge pursuant to CWC § 13385 et seq.

At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

At this time staff is unable to identify and quantify any specific economic benefit realized by NASSCO from failing to comply with *Order NO. 97-36*.

CALCULATION OF CIVIL LIABILITY

Pursuant to the CWC, § 13385 et seq., the maximum civil liability that a Regional Board may assess for violations of waste discharge requirements is:

- ten thousand dollars ($10,000) per day of violation; and
- ten dollars ($10) for every gallon discharged, over one thousand gallons discharged, that was not cleaned up.

Potential Maximum Liability Calculation

The potential maximum violation for each violation is $10,000.

21 violations * $10,000 per day of violation = $210,000

The potential maximum violation for each gallon of discharge minus one thousand gallons is $10.00 per gallon. There were 11 discharge volumes reported for the 21 discharge samples taken.

(396,378 – 11,000) gallons * $10.00/gallon = $3,853,780

Potential Total Maximum Liability = $4,063,780

Recommended Liability Calculation

The maximum civil liability for each discharge is not being recommended because NASSCO had taken measures to control some of the storm water discharges and information regarding direct impacts to the environment is not readily available. The severity of the toxic response is considered in the recommendation. Because the chemical concentrations are a significant concern regarding the industrial storm water discharges and the toxicity responses varied from each discharge point, the civil liability for each violation varies according to the following:

The recommended civil liability for samples with 0% survival response is $8,000 per violation for 6 samples.

6 samples at 0% survival response * $8,000 = $48,000

The recommended civil liability for samples with a 25% to 50% survival response is $6,000 per violation for 8 samples.

8 samples at 25% to 50% survival response * $6,000 = $48,000

The recommended civil liability for samples with a 55% to 85% survival response is $3,000 per violation for 7 samples.

7 samples at 55% to 85% survival response * $3,000 = $21,000

Sub Total = $117,000

The maximum civil liability for each gallon of discharge is not being recommended because NASSCO had taken measures to control some of the storm water discharges. The total volume of storm water discharge was not reported. Based on the factors in the assessment, the volume of the storm water discharges, the potential to impact the waters of San Diego Bay, and the potential impacts to the sediments in San Diego Bay, the recommended civil liability per gallon of discharge is $0.15 per gallon minus the first 1000 gallons as required by CWC § 13385 et seq. The calculations for the known volume of the storm water discharges are as follows:

SW-1
(29,491 - 1000) * $0.15 = $4,273

SW-2
(57,977 - 1000) * $0.15 = $8,546

SW-3
(145,062 - 1000) * $0.15 = $21,609

SW-6
(9,673 – 1000) * $0.15 = $1,300

SW-7
(18,497 – 1000) * $0.15 = $2,624

Berth 2
(13,400 – 1000) * $0.15 = $1,860

Berth 3 / 4
(12,125 – 1000) * $0.15 = $1,668

Berth 5 / 6
(20,799 – 1000) * $0.15 = $2,969

Berth 9 / 10
(6,636 – 1000) * $0.15 = $845

SW-10
(49,536 – 1000) * $0.15 = $7,280

SW-11
(33,182 – 1000) * $0.15 = $4,827

Sub Total = $57,801

Total recommended liability is the addition of the sub totals for each violation ($117,000), and for the volume of discharge ($57,801).

Total recommended liability is:

$117,000 + $57,801 = $174,801

Comparison of Proposed Civil Liability to SWRCB Guidance to Implement the Water Quality Enforcement Policy, Assessment Matrix

The *SWRCB Guidance to Implement the Water Quality Enforcement Policy* contains an *Assessment Matrix* as shown below. The matrix ranks the *Compliance Significance* (Discharger) and *Environmental Significance* (Discharge) as *Minor*, *Moderate* or *Major*. Based upon the determination of the two categories, a range of civil liability is provided. This matrix assists Regional Board staff in determining, after a consideration of the factors considered for the ACL, whether the proposed ACL is appropriate.

Considering the time allowed by *Order No. 97-36* for NASSCO to comply with the toxicity specification for storm water discharge, and considering that NASSCO had not completed its storm water diversion systems, a *Moderate* rating for *Compliance Significance* is appropriate. Considering the severe toxic response of the storm water discharges, the chemical concentration in the storm water discharges, and the potential impacts to San Diego Bay or the sediments therein, a *Major* rating for *Environmental Significance* is appropriate.

Assessment Matrix

Compliance Significance (Discharger)	Environmental Significance (Discharge)		
	Minor	Moderate	Major
Minor	$100 - $2,000	$1,000 - $20,000	$10,000 - $100,000
Moderate	$1,000 - $20,000	$10,000 - $100,000	$50,000 - $200,000
Major	$10,000 - $100,000	$50,000 - $200,000	$100,000 to maximum amount

A review of the *Assessment Matrix* indicates that the recommended civil liability falls within the *Major* range for *Environmental Significance* and within the *Moderate* range for *Compliance Significance*.

Based on an analysis of all the factors, the recommended civil liability is appropriate.

TOTAL PROPOSED ADMINISTRATIVE CIVIL LIABILITY

The total proposed civil liability in this matter is **$174,801**.